FILE COPY

DEC 11

CHARLES ELMOR

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1936

No. 532

UNITED STATES OF AMERICA
Petitioner

vs.

MORGAN BELMONT AND ELEANOR R. BELMONT, AS EXECUTORS OF THE LAST WILL AND TESTAMENT OF AUGUST BELMONT, DECEASED

BRIEF *AMICUS CURIAE* ON BEHALF OF PRESIDENT AND DIRECTORS OF THE MANHATTAN COMPANY IN OPPOSITION TO THE PETITION FOR A WRIT OF CERTIORARI

ROBERT J. SYKES
Attorney for President and Directors of the Manhattan Company, amicus curiae

ROBERT J. SYKES
WILLIAM C. MORRIS
Of Counsel

INDEX

	PAGE
Opinions below	1, 2
Questions presented	2
Statement	3
Argument	4

CITATIONS:

Clark *v.* Williard, 294 U. S. 211	5
German-American Coffee Co. *v.* Diehl, 216 N. Y. 57	4
Pennington *v.* Fourth National Bank, 245 U. S. 269	4
Security Bank *v.* California, 263 U. S. 282	4
St. Clair *v.* Cox, 106 U. S. 350	4
Vladikavkazsky Ry. Co. *v.* New York Trust Co., 263 N. Y. 369	4, 5
United States *v.* Bank of New York and Trust Co., 296 U. S. 463	2, 3

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1936

No. 532

—o—

UNITED STATES OF AMERICA,
Petitioner,

vs.

MORGAN BELMONT AND ELEANOR R. BELMONT, AS EXECUTORS OF THE LAST WILL AND TESTAMENT OF AUGUST BELMONT, DECEASED.

—o—

BRIEF *AMICUS CURIAE* ON BEHALF OF PRESIDENT AND DIRECTORS OF THE MANHATTAN COMPANY IN OPPOSITION TO THE PETITION FOR A WRIT OF CERTIORARI

Report of Opinions Below

The opinion of the United States District Court for the Southern District of New York (R. 35-37) is not reported. The opinion of the United States Circuit Court of Appeals for the Second Circuit is reported in 85 Fed. (2d) 542.

Questions Presented

1. Whether decrees of the Russian Socialist Federated Soviet Republic nationalizing a Russian corporation and confiscating its property are effective to reach assets which have a situs in the State of New York.

2. Whether the assignment from the Union of Soviet Socialist Republics could transfer any title to the United States where the decrees appropriating the assets of the Russian corporation were not enacted by said Union, but were made by the Russian Socialist Federated Soviet Republic and the latter became the purported statutory successor to the corporation.

Opinions in the Courts Below

The District Court followed the ruling of Judge Coxe in the case of *United States* v. *Bank of New York and Trust Company*, 10 Fed. Supp. 269. (Affirmed on other grounds, 77 Fed. (2d) 866; 296 U. S. 463.)

The Circuit Court of Appeals, in its prevailing opinion, sustained the decree dismissing the bill of complaint of the petitioner and held that it is contrary to the public policy of the State of New York and the public policy of the United States to enforce a confiscatory decree of a foreign government with respect to property located within New York State at the date of the decree.

The Circuit Court rejected the contention of the Government that the acceptance of the Litvinoff assignment and the commencement of the present suit demonstrated the public policy of the United States as not opposed to the enforcement of the confiscatory decree and stated, in substance, that recognition permitted Russia to resort to

our courts and permitted it to have its rights adjudged by the same principles as are applied to other litigants.

The prevailing opinion further held that since a matter of title was involved, State law and not Federal law governed.

In view of the recent legislation in New York State to the effect that the title of the confiscating government is not to be recognized until after the expiration of the period in which creditors or stockholders may claim it, the complaint of the Government was dismissed *without prejudice to the commencement of an action at the expiration of the statutory period within which crediters or stockholders may present their claims against the fund.*

Judge Manton dissented upon the same grounds set forth in the case of *United States* v. *Bank of New York and Trust Company,* 77 Fed. (2d) 866.

Statement

The President and Directors of the Manhattan Company has a vital interest in substantive issues raised by the petition for a writ herein. The questions here presented are substantially identical with the questions on the merits presented in *United States* v. *Bank of New York and Trust Company; United States* v. *President and Directors of the Manhattan Company,* 296 U. S. 463. However, when the matter came on before this Court, the Court intimated no opinion on the merits, but held that the Federal courts had no jurisdiction of the particular suits.

The facts in the case on appeal herein have been set out in detail in the main brief submitted by the petitioner.

ARGUMENT

I

No question here arises as to the power of the Russian government to regulate the affairs of the corporation within its own territory or to render judgments as to persons within its jurisdiction.

The Government is attempting to extend the principle which permits the legislature of the domicile of the corporation to control and direct its affairs and those of its members to a situation which does not regulate the activities between corporate members, but totally destroys them.

When a foreign corporation enters this State and transacts business here, it must yield obedience to our laws. "For many purposes the fiction of its residence in the state of its origin must then be disregarded." *German-American Coffee Co.* v. *Diehl*, 216 N. Y. 57, 63; *St. Clair* v. *Cox*, 106 U. S. 350, 355.

Unquestionably, the decree in question was enacted for the enforcement of a local policy only within the State of Russia and was not intended to affect the validity of the dealings of the company in foreign jurisdictions.

In the present case the property in dispute is a bank deposit and since it is payable in this jurisdiction, it is governed by the law of the State of New York. *Security Bank* v. *California*, 263 U. S. 282, 285; *Pennington* v. *Fourth National Bank*, 243 U. S. 269, 271; *Vladikavkazsky R. Co.* v. *N. Y. Trust Co.*, 263 N. Y. 369.

Recognition did not change the established policy of the State of New York, which refused to enforce the

Soviet decrees as shocking to our sense of justice and equity. *Vladikavkazsky Ry. Co.* v. *N. Y. Trust Co.*, 263 N. Y. 369.

Since the issue is title to a specific *res* within the jurisdiction of New York State, the universal successor "must submit to the mandate of the sovereignty that has physical control of the property which he desires to reduce to his possession." *Clark* v. *Williard*, 294 U. S. 211.

II

The Government of the Union of Soviet Socialist Republics assigned to the United States "the amounts admitted to be due or that may be found to be due it as the successor of prior government of Russia, or otherwise." The United States does not claim the amount sued for is due the Union as the successor of any prior government of Russia but relies on the words "or otherwise," *i. e.*, by confiscation and appropriation.

However the assignment to the United States was not made by the foreign sovereignty dissolving the corporation, or by the State which took title to the assets of the dissolved corporation. The assignment of the amounts due is made by the Union of Soviet Socialist Republics (R. 25-29). The decree which purported to dissolve and nationalize the Russian corporation was enacted by the Russian Socialist Federated Soviet Republic (R. 14, *et seq.*).

Even if the Government's argument to the effect that upon dissolution the assets of the corporation shall pass to the person designated by statute and give the right to such person to all personal property wheresoever situ-

ated, there is nothing in the record showing that this person is the assignor. Assuming that the property passed to the Russian Socialist Federated Soviet Republic by virtue of the decrees, we have no allegation or any evidence in the record which shows that the Russian Socialist Federated Soviet Republic transferred its rights to the Union of Soviet Socialist Republics, so that the latter, in turn, could make an assignment to the United States. Until the United States cures this defect, it has no standing in our courts.

Each state has a right to declare policies and laws which are to govern within its jurisdiction. The recognition of a foreign government does not destroy the principles which have been in force for a number of years.

Nothing more is accomplished by recognition than to permit the recognized sovereignty to sue in our courts and to be bound by the principles controlling in our jurisdiction.

It is conceded by President and Directors of the Manhattan Company that there are many important cases now pending which involve substantially the same issues that are herein presented. Most of these cases are either under the jurisdiction of the Supreme Court of the State of New York or the Federal District Court of New York. The New York State Court has, by repeated decisions, refused to recognize a title founded upon Soviet decrees of confiscation. The tenor of the Federal Courts' decisions are similar. When the public policy of the forum is against confiscatory legislation, international comity has no place.

While it is admitted that a ruling by the Supreme Court of the United States is frequently desirable, we feel that the precedents against the Government are too well established to require it.

There is neither reason nor authority to sustain the contentions of the Government, and the petition for a writ of certiorari should accordingly be denied.

Respectfully submitted,

ROBERT J. SYKES,
Attorney for President and Directors of the Manhattan Company, amicus curiae.

ROBERT J. SYKES,
WILLIAM C. MORRIS,
Of Counsel.

FILED
FEB 26 193
CHARLES ELMORE C
C

IN THE

Supreme Court of the United States

OCTOBER TERM—1936.

No. 532.

UNITED STATES OF AMERICA,
Petitioner,

AGAINST

MORGAN BELMONT and ELEANOR R. BELMONT, as Executors of the Last Will and Testament of AUGUST BELMONT, deceased,
Respondents.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Second Circuit.

Petition and Notice of Motion to Intervene.

SAMSON SELIG,
Attorney for Petitioner to Intervene,
Office & P. O. Address,
No. 80 Broad Street,
Borough of Manhattan,
City of New York.

LOCKE APPEAL PRESS, INC., 65-67 Duane St., N. Y. C. Tel. WOrth-2-0689

IN THE

Supreme Court of the United States

OCTOBER TERM—1936.

No. 532.

UNITED STATES OF AMERICA,

Petitioner,

AGAINST

MORGAN BELMONT and ELEANOR R. BELMONT, as Executors of the Last Will and Testament of AUGUST BELMONT, deceased,

Respondents.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Second Circuit.

Notice of Motion to Intervene.

SIRS:

PLEASE TAKE NOTICE that upon the petition of John R. Crews, temporary receiver of the assets in New York of Petrograd Metal Works, also known as Kompania Petrogradskago Metallicheskago Zavoda, and also known as Petrograd Metal Manufacturing Company, verified the 20th day of February, 1937, and upon all the pleadings and proceedings herein, the undersigned will move before a Term of this Court to be held at the Court House in Washington, D. C., on the 1st day of March, 1937, at 12 o'clock noon, or as soon thereafter as counsel can be heard, for an order allowing John R. Crews, temporary receiver

of the assets in New York of Petrograd Metal Works, also known as Kompania Petrogradskago Metallicheskago Zavoda, and also known as Petrograd Metal Manufacturing Company, appointed by the Supreme Court of the State of New York, Kings County, to intervene herein and to submit to the jurisdiction of this Court, and for such further or other relief as to this Court may seem proper.

Dated, New York, February 25th, 1937.

Yours, &c.,

SAMSON SELIG,
Attorney for Petitioner to Intervene,
No. 80 Broad Street,
Borough of Manhattan,
City of New York.

To:

STANLEY REED, ESQ.,
Solicitor General,
For Petitioner.

CADWALADER, WICKERSHAM & TAFT, ESQS.,
Attorneys for Respondents,
No. 14 Wall Street,
Borough of Manhattan,
City of New York.

Petition of John R. Crews.

IN THE
SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM—1936.

No. 532.

UNITED STATES OF AMERICA,

Petitioner,

AGAINST

MORGAN BELMONT and ELEANOR R. BELMONT, as Executors of the Last Will and Testament of AUGUST BELMONT, deceased,

Respondents.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Second Circuit.

To the Supreme Court of the United States:

The petition of JOHN R. CREWS, respectfully shows to the Court, and alleges:

On the 25th day of June, 1936, by an order duly made by Mr. Justice Leander B. Faber, a Judge of the Supreme Court of the State of New York, I was duly appointed temporary receiver of all the property and assets, debts, equitable interests, rights and things in action, effects and estate, real and personal, tangible and intangible of Petrograd Metal Works, also known as Kompania Petrogradskago Metallicheskago Zavoda, and also known as Petrograd Metal Manufacturing Company, on the application of a stockholder of the said Petrograd Metal Works.

I duly qualified as such temporary receiver and filed the bond directed in said order and have made demand on the respondents herein.

I was appointed receiver pursuant to the provisions of Section 977B of the Civil Practice Act of the State of New York. Under this Act it is my duty to collect all assets of the Petrograd Metal Works in the State, and to advertise for and examine claims against the Corporation. This New York Statute not only sets up a procedure to be followed in the disposition of the corporate assets situated in New York, but sets forth in detail the classes of persons who are to be entitled to receive distribution, and the order in which the receiver is to make the distribution, and the disposition of the surplus remaining after the payment of all creditors.

Thereafter, a demand was duly served by me as temporary receiver on Morgan Belmont and Eleanor R. Belmont as executors of the Last Will and Testament of August Belmont, deceased, for the delivery to me of the assets in their possession within the State of New York belonging to the Petrograd Metal Works.

I desire to intervene in the action now pending in this court between the petitioner, United States of America, and Morgan Belmont and Eleanor R. Belmont, executors of the Last Will and Testament of August Belmont, deceased, respondents. The action was brought in the United States District Court for the Southern District of New York by the United States to recover the entire balance of a bank deposit made prior to 1918, with August Belmont and Company by the Petrograd Metal Works, of whose assets in New York I am now receiver. The United States claims title to said deposit by virtue of an assignment contained in an exchange of letters passing between the President of the United States and M. Litvinov, Commissar of Foreign Affairs of the Union of Soviet Socialist Republics under which the Union of Soviet Socialist Re-

publics was alleged to have assigned to the United States of America all amounts due or that may be found to be due it as successor of prior governments of Russia, or otherwise, from American nationals.

The complaint was dismissed by the District Court for failure to state facts sufficient to constitute a cause of action. On appeal to the Circuit Court of Appeals, the judgment dismissing the complaint was affirmed, and the case is now here on certiorari. I was appointed receiver as aforesaid after the argument of the appeal in the Circuit Court of Appeals.

If the petitioner is successful in the action brought by it, the result will be that it will take over all of the aforesaid bank deposit of the Petrograd Metal Works with August Belmont & Co. and there will be nothing left for the creditors and stockholders of the company, the assets of which I am receiver.

The reason why I have not heretofore asked permission to intervene herein is that it has only within the last few days and since the service of the Government's brief, been called to my attention that the Government is here arguing that the legislative expression of the public policy of New York, contained in the amendment to the Civil Practice Act (Section 977-b) cannot be considered by this Court, because that statute may only be invoked where a receiver, appointed pursuant thereto, is a party to the action. In this connection, the Government says at page 43 of their brief:

> "The court below cited this statute in connection with its statement that 'it is contrary to the public policy of the state of New York to enforce confiscatory decrees with respect to property located here at the date of the decree' (R. 24). • • •
>
> "Presumably the court had in mind the concluding sentence of Sec. 19 of the statute which reads:
>
> " 'Any receiver appointed pursuant to the provisions of this section may be substituted for such